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Opening Remarks

From Watergate to Generation Next: Opening Remarks

by
RORY K. LITTLE*

Good morning. Welcome to Symposium-gate.

First, I want to thank Dean Kane for her support, both past and future, in putting on a symposium of this size and stature. Mary Kay Kane has a very light touch when it comes to events like this, which is a really wonderful thing because it allows everybody else to find their own voice and put together their own ideas, and with that sort of support a law school really flourishes as a place of open education and debate. Please join me in thanking Mary Kay Kane (applause).

I also want to thank the law journal students. It costs a considerable amount of time and money to put on a symposium like this. It's also an amazing amount of effort to put out the resulting issue. There will be a published issue with people's articles and transcriptions of some of the remarks you'll hear today, and the students work tirelessly to make that happen. A lot of it is behind the scenes. Particularly David Cannon and Mike Quinn (applause).

It's really true that they were persistent, because when David Cannon first came to me and proposed this idea, I basically said to him "What a bad idea. It can't possibly be interesting, it's a tired subject, most people have forgotten it, we're having a *real* Watergate today with the Clinton events, and besides, didn't Watergate happen in 1973 or 1974, where do we get this twenty-five years idea?"

But David was very polite and he persisted. He asked me just to speculate with him, *if* they did a symposium like this, who *might* we think about calling? And in that conversation we formulated the basic outline that you see today, which is three different panels and a number of separate remarks.

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I also want to thank the people who are running the video equipment. Only two people run the video services for this whole school, Martin Pacholuk and Laura Irvine, and we are attempting to produce a good video here which we hope to make available to interested parties after the event.

Thanks to all our participants as well. Many people have come from far across the country and, in fact, Judge Trott is still traveling, he is flying from Idaho this morning, and he should be here a little bit before lunch.

It's going to be a great day, it's going to be a very long day, and it is all going to happen in this room, including the lunch. There will be a buffet just outside and then you'll come back in here and we'll hear from Jim Robinson, the chief of the Criminal Division, during the lunch hour. I hope you'll be good about trying to stay in the room.

We have, I think, four federal judges; four former or current Assistant Attorney Generals, Chiefs of the Criminal Division at the Department of Justice; a number of people who were lawyers for various legislative branches or offices in Washington; and, remarkably, I think we have two people who have no Washington connection. Not coincidentally, perhaps, they are both on the Legal Ethics panel.

Early in 1972 Now, why am I starting there? Because today we're teaching a generation of students that were born after Watergate. One of the two student organizers of this conference was born after Watergate. We're teaching a generation of students to whom the Watergate events are ancient history, before their birth. So we need to set the scene.

Early in 1972, toward the end of President Richard Nixon's first term, as the presidential election campaigns were gearing up, some men broke into the campaign headquarters of the Democratic Party in Washington, D.C., which happened to be located in a retail and apartment complex across the street from the John F. Kennedy Center for the Performing Arts situated on the banks of the Potomac River. That complex was named "The Watergate."

This break-in was initially dismissed by the White House as a "third-rate burglary" unrelated to President Nixon's campaign or personnel. Of course, Watergate ultimately grew to create perhaps the most severe executive branch crisis ever to confront our tripartite federalist system. The burglary and, more significantly, its criminal cover-up, were ultimately traced to the President himself acting from within the oval office at the White House.

Public attention was riveted on the growing scandal for over two years. Huge public resources were devoted in all three branches to address the burgeoning consequences. And dozens, if not hundreds, of young lawyers were enlisted to go to Washington, D.C., to

investigate and manage these events as they rapidly unfolded. The Office of the President itself was threatened by internal corruption, deceit, and stonewalling. It is impossible to imagine another such event in our lifetime.

Well, maybe not.

In any case, Philip Lacovara (a young lawyer who argued for the Special Counsel's Office in the Supreme Court decision known as the "presidential tapes case," *United States v. Nixon*¹) has recently noted that, in 1973, the outcome, the ultimate resolution of these unfolding events, was "hardly as clear as it may seem in hindsight."² Many of the possible or even likely outcomes that were envisioned at the time led to an obdurate and irremediable confrontation between the President and the other co-equal, not superior, branches of our government. The President himself suggested that he was no more bound to follow a Supreme Court or congressional order than they might be, as coordinate branches, if he were to order them to act.³ As President, Richard Nixon fired one Attorney General and a number of lesser executive branch officials rather than cede his authority.

Today, twenty-five years later—or twenty-six or twenty-seven, depending on how you count—we are educating a generation of students who were born after all of these events. Anna Quindlen, the *Newsweek* columnist, calls them "Generation Next."⁴ They are not just post-Watergate, they are post-Vietnam, post-civil rights, post-gas lines, and post-Beatles. The events that have shaped their lives are events that barely register in some of our older, out-dated world views.

In 1999 a survey of high school students produced the following responses to the question "What is Watergate?" They included: "Nixon embezzled money and used it to build the Watergate Hotel;" "A scandal that involved Richard Nixon, Bill Clinton and his wife, Hillary;" and, perhaps most interestingly, "it was something that involved the British against the United States people in 1789."⁵ Watergate is, simply put, ancient history to today's youth.

More recently, on this same date one year ago today, President Clinton was on trial in the Senate.⁶ We were facing the impeachment

1. 418 U.S. 683 (1974).

2. Phillip Allen Lacovara, *United States v. Nixon: The Prelude*, 83 MINN. L. REV. 1061, 1062 (1999). Lacovara's article is part of a symposium addressing the topic "*United States v. Nixon: Presidential Power and Executive Privilege Twenty-Five Years Later.*"

3. See *id.* at 1063.

4. See Anna Quindlen, *Now It's Time for Generation Next*, NEWSWEEK, Jan. 1, 2000, at 112.

5. Leah Garchik, *Young Historians on the Watergate Scandal*, S.F. CHRON., Dec. 3, 1999, at C24.

6. See, e.g., Lizette Alvarez, *House Managers Felt Like Second Class Citizens*, N.Y.

of a President and a Senate trial, yet it was based on events that were far more trivial and, significantly, *not* involving a conspiracy to cover up by White House lawyers. Indeed, the Clinton impeachment in some sense involved the White House lawyers as the defenders of the institution. Yet today even the Lewinsky scandal is fading from public consciousness. Where can the events of Watergate a quarter of a century ago, dwell in our minds today?

In mid-1999, a poll of over 1500 Americans revealed that when they were asked what they remembered most about the seventies, three times as many people mentioned disco and John Travolta as mentioned Nixon and Watergate. Even more significantly perhaps, neither set of answers generated more than six percent of the response.⁷

But I think it's undeniable that the word "Watergate" has permeated the cultural fabric of this country. When I searched *Lexis* for references to "Watergate" in our country's newspapers for a thirty-day period, the month of December 1999, I discovered 772 references. I then thought that perhaps December 1999 was an unfair sample, due to a lot of pre-millennium retrospective articles. So yesterday I searched the last thirty days, January 4th to February 4th, 2000, and I still found 765 references. So I don't think it's a fluke. And of course every political scandal in Washington since 1974 is appended with the suffix "-gate": file-gate, travel-gate, for a while Iran Contra was even called Contra-gate.

The theory of Bob Woodward's latest book, *Shadow*, is that Watergate has cast a shadow over all of the presidencies that have followed it, regardless of their political affiliation.⁸ The cultural and political significance of Watergate persists no matter what. And for lawyers the persistence is even greater. But there is no doubt that history moves forward and often fails to look back, so that is what we're doing here today—looking back.

It is important to note that in recent months significant Watergate figures have died. Two Watergate-era Attorney Generals have died: Elliot Richardson, the Attorney General who resigned rather than follow President Nixon's "Saturday Night Massacre" order to fire special prosecutor Archibald Cox;⁹ and only two days ago, Richard Kleindienst, who was President Nixon's Attorney

TIMES, Feb. 5, 1999, at A3.

7. See Michael J. Robinson, *Collective Memory: From the 20s through the 90s, the Way We Think We Were*, in THE ROBINSON CHRONICLES, No. 1, p.11.

8. See generally BOB WOODWARD, *SHADOW: FIVE PRESIDENTS AND THE LEGACY OF WATERGATE* (1999).

9. See NBC Nightly News: *Elliot Richardson Dies* (NBC television broadcast, Dec. 31, 1999).

General and who had the misfortune of taking office five days before the break-in.¹⁰ Although Kleindienst later had problems that were unrelated to Watergate, he's been credited with actually supporting the Watergate criminal investigation—rather than immediately calling the FBI off the case, he called the Department of Justice and told them he wanted these people prosecuted no matter where they were found. John Erlichmann also died in 1999.¹¹ So large players in the drama are beginning to leave the field. Thus, we are very proud to sponsor today's symposium in order not just to relive the Watergate events, but also to analyze their lasting consequences. We want to honor their significance in the present and produce a written and visual record of historical significance for the future.

In an opinion issued only sixteen days after the extraordinary July 8, 1974 oral argument, a unanimous Supreme Court acknowledged in *United States v. Nixon* the primacy in our democracy of the rule of law. The decision was eight to nothing. (Twenty-five years ago, now-Chief Justice William Rehnquist was then the junior justice on the Court, and he abstained because he had earlier been part of President Nixon's Department of Justice in the Office of Legal Policy.) The Court in its opinion placed due process of law and the fair administration of criminal justice above generalized claims of presidential privilege.¹² Some have questioned that balance, particularly in light of its long range consequence in producing the *Clinton v. Jones* decision two decades later.¹³ But few, if any, have criticized the ultimate result of *United States v. Nixon* in context: the President was compelled to surrender smoking-gun tapes which corroborated John Dean's testimony and led directly to Nixon's resignation. In this way, through the regular operation of the recognized legal processes of our constitutional plan, the constitutional crisis was confronted and averted. The opinion in *Nixon* may have been poorly (and was certainly hurriedly) written, but the result was right.¹⁴

10. See David Stout, *Richard G. Kleindienst, Figure in Watergate Era, Dies at 76*, N.Y. TIMES, Feb. 4, 2000, at C22.

11. See *NBC Nightly News: John Ehrlichman, Witness in Watergate Hearings, Dead at 73* (NBC television broadcast, Feb. 15, 1999).

12. See *United States v. Nixon*, 418 U.S. 683, 707-13 (1974).

13. See, e.g., Michael Stokes Paulsen, *Nixon Now: The Courts and the Presidency After Twenty-Five Years*, 83 MINN. L. REV. 1337 (1999). In *Clinton v. Jones*, 520 U.S. 681 (1997), the Court ruled unanimously that the President is not immune from civil suit. The Court relied in part on the *Nixon* decision, see *id.* at 704, which Professor Paulsen has described as a "doctrinal trainwreck," see Paulsen, *supra*, at 1340. See also Akhil Reed Amar, *Nixon's Shadow*, 83 MINN. L. REV. 1405 (1999) (arguing that *Nixon* "featured remarkably sloppy reasoning" and that *Nixon's* errors were "also key in *Jones*").

14. Accord Amar, *supra* note 13, at 1410.

I will now briefly summarize the three panels today that are going to address diverse aspects of Watergate and its consequences.

First, Professor Richard Zitrin will moderate a panel that will address legal ethics, both the teaching of legal ethics and the ethics of lawyer's professional lives today. I will then moderate a panel on public corruption, the investigation and prosecution of high level public corruption cases, in Watergate, in the last twenty-five years, and in the future. At lunch, Assistant Attorney General James Robinson will tell us about the Department of Justice's plans for the future, now that there is no longer an Independent Counsel Statute. After lunch Fred Altshuler (who was a Watergate prosecutor and now has his own law firm here in San Francisco) is going to moderate the panel of actual participants in the Watergate affair, which is a large panel of eight participants, from one o'clock to three o'clock.

Finally, Kenneth Starr, whom I still refer to as "Judge," which he of course once was on the D.C. Circuit, has agreed to faithfully observe and summarize the days events, perhaps with a few editorial comments, in his closing remarks.

Ken Starr was not a player in the Watergate drama. During those years he was a law student and a judicial law clerk. He's a very young man. You don't want to duck out of this symposium early, although by three o'clock it will seem like a long and overflowing substantive day. I am relatively confident based on recent events that Judge Starr has a strong character and endurance to last through the day and provide us lively and enlightening closing thoughts.

Introduction of John Dean

Before the first panel begins, I want to introduce you to John Dean, because John Dean was the catalyst speaker for this symposium. Every symposium has to get one name that everybody recognizes because the first question when you call somebody to be part of a symposium is "who else is coming?" So, you need that snowball. John Dean agreed almost immediately upon us calling him, and he had no prior relationship with us, to come and talk at this symposium. I think that's a mark of his involvement in the current affairs of the day, as well as the past events, and his courage. Thus, I want to give you a proper introduction.

John Dean graduated from Georgetown University Law School in 1965 and only five years later at the age of thirty one, he was the White House counsel to President Richard Nixon. Prior to that in a heady rocketing rise through Washington's inner circles, he had served as a republican counsel to the House Judiciary Committee and as an Associate Deputy Attorney General to Attorney General John Mitchell.

Mr. Dean held the White House counsel post for three years, until he was forced to resign in the midst of the Watergate scandal. He later served four months of a prison sentence for his involvement in Watergate.¹⁵ Since then he's made his home in Southern California, where his wife Maureen has lived, and he now works as a private investment banker. In 1976, he wrote a best-selling account of the White House during the Watergate years entitled *Blind Ambition*. He later published a second book about those events in 1982 entitled *Lost Honor*. He maintains a keen and current interest in national politics and policy. He has written a number of articles on law and politics. And during the impeachment proceedings against President Clinton, Mr. Dean served as an on-air commentator for the MSNBC Network.

Now that much about John Dean is easy to draw from the public record. But I think it's fair to say that the name John Dean is evocative of a much more personal, even visceral picture for many of us who are of a certain age. Some have referred to us as "Watergate babies."

Does anybody remember this picture?¹⁶ It's hard to see. Does anybody *not* remember this picture? This is John Dean standing tall to be sworn in, in front of the Senate Watergate Committee in June 1973. I think I speak for many lawyers in my generation that what I remember about reading *Blind Ambition* while I was in college is that it was a riveting and inspiring occasion. Of course it's a detailed first-hand account of the Nixon White House. It is written accessibly, it is readable, and still today it makes a great read. I read it again this week. I urge you to do the same. But *Blind Ambition* meant much more than just a good story of political intrigue to people my age. We were struggling for a professional career path in the anti-establishment, post-Vietnam, post-Watergate age. Idealistic, young, "pre-law" students—we were all wondering whether a major in English might be a more productive and honorable choice. But John Dean's book suggested that a government lawyer could and should have a sense of honor and attempt to bring integrity to his or her job. It suggested that blind ambition ought not to overwhelm one's personal sense of ethics, and that the cost of allowing one's ambition to outrun one's personal moral code could be very, very high.

Now of course the John Dean that is described in this book did not begin with that attitude. Indeed, he did not come to a position of integrity until, in one sense, it was too late. Too late to prevent the harm, but not too late to honestly expose it. And there is a remarkable moment described in this book that I am going to read to

15. See JOHN DEAN, *BLIND AMBITION* 362, 397 (1976).

16. Please see photo preceding John Dean's article, *infra*.

you. I am reading from page 168 of *Blind Ambition*.

It was time to face squarely what I had rather impulsively told Haldeman about obstruction of justice. I closed the doors to my office and took out a book of criminal statutes. . . . I was not, am not, an expert on criminal law, but now I took a sweaty tour through the obstruction-of-justice laws. What I found obliterated any notions I might have entertained that I had been protecting myself. . . . It is uncanny, I thought, how the law prohibits all those little acts that had set off my chemical instincts of guilt, instincts which had been quiet as possums during all those meetings. Now that I had read it in black and white, it was clear enough. We were criminals.

Now John Dean of course played a central, if not *the* central, role in the legal proceedings that exposed the criminality after Watergate. He was the star witness in the U.S. Senate's televised Watergate hearings in the summer of 1973, hearings that led directly to the President's resignation in 1974. John Dean's courage in those hearings should not go unremarked. Only later were the oval office's tape recordings produced that corroborated Dean's unbelievable story in virtually every detail. Until the tapes came out the White House and President Nixon himself had called Dean a liar and let him twist, as they say, slowly in the wind with the Watergate prosecutors. The Senate Watergate hearings are one of those moments where many people of a particular age can remember exactly where they were and what they were doing. I was working in a factory with blue collar workers, people with hair down to here and flags for patches on their jeans. And I can remember a number of those guys calling in sick to watch John Dean testify. He was their hero, and he was a lawyer.

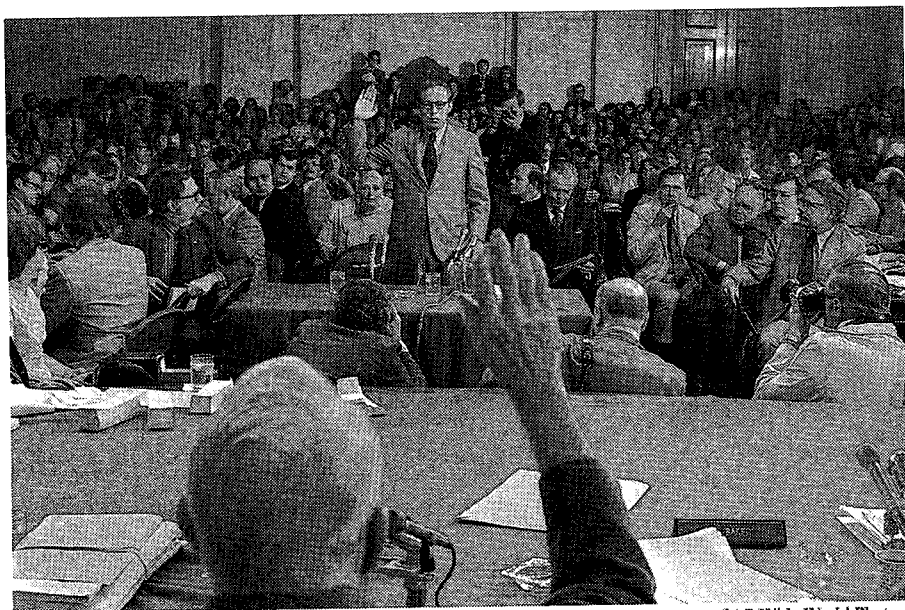
Over a year later, John Dean was the prosecution's main witness in the trial that convicted former Attorney General Mitchell and the two "White House Bobs"—Ehrlichman and Haldeman—in the fall of 1974. Dean himself served four months of a federal sentence. I would note that Senate immunity grants did not have quite the preclusive effect that they later proved to have for Ollie North.¹⁷ But what remains in my mind twenty-five years later is an image of late arrived, but fully blown, integrity. Did John Dean testify in part to save his own skin? I have no doubt that that was one motivation. But it could not have been the only one. For where were the other honest witnesses, equally in danger of going to jail, coming forward? No, when he wrote in the aftermath of prison in 1976, John Dean did not pull any punches, and he candidly spoke of his own involvement in

17. See *United States v. North*, 910 F.2d 843 (D.C. Cir. 1990) (vacating Oliver North's convictions based on claims of immunity for congressional testimony), *amended by* 920 F.2d 940 (D.C. Cir. 1990).

those events, seamy events like the White House directing pay-offs to the burglary masterminds. His book inspired many of us to seek honor and integrity in the law while also serving the public's interest in effective government. I am pleased to turn the podium over to, and I ask you to please welcome, John Dean (applause).

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Courtesy of AP/Wide World Photos.

